

March 19, 2013

The Honorable Terry B. Gerratana
The Honorable Susana M. Johnson
Co-Chairs, Public Health Committee
Connecticut General Assembly
Room 3000, Legislative Office Building
Hartford, CT 06106

Re: SUPPORT SB 1067

Dear Co-Chairs Gerratana and Johnson:

On behalf of the Connecticut Society of Dermatology and Dermatologic Surgery (CDS), the American Academy of Dermatology Association (AADA), and the American Society for Dermatologic Surgery Association (ASDSA), we are writing to voice our strong support for SB 1067, which prohibits facilities from referring to themselves as "medical spa," "medspa" or "medispa," in advertising unless they employ a physician medical director to oversee procedures and require that this physician medical director be onsite when medical procedures are performed. We would also support amendment language to require that a good faith appropriate patient examination be conducted by the supervising physician before the initial procedure or course of treatment, and to require that advertisements be transparent with regard to health care providers' level of licensure, training, and board certification.

Members of the CDS, the AADA, and the ASDSA are treating numerous patients with horrific complications who have received a cosmetic medical procedure in a spa, beauty salon or some other facility where onsite physician supervision does not exist. Many patients are lured into these facilities by false, deceptive and misleading advertising. These practices are not concerned with patient safety, but rather are interested only in financial gain.

It should be noted that the problem lies not with the medical spa model, itself, but rather with non-physician-owned medical spas that do not provide adequate physician supervision and oversight. There are many legitimate, safe, physician-owned medical spas that operate with a high standard of patient care. However, lack of regulation and enforcement has enabled a large number of medspas to offer cosmetic medical procedures by inadequately trained or supervised persons to an unsuspecting public.

Our organizations have, on an ongoing basis, received a number of reports from our members who have been solicited to act as medical directors in name only, in a medical spa, or "medspa" in exchange for a monthly fee. We have become increasingly concerned about the proliferation of non-physicians practicing medicine and its impact on patient safety. Recent studies conducted by the ASDSA have shown an increase in patient complications resulting from this trend. A 2005 study of laser complications by non-physicians published in *Skin and Aging* magazine found that, "Eighty two percent of all complications occurred in facilities that had no direct physician supervision. Of these, 57% were in facilities with a 'medical director' who had limited training in dermatologic procedures and laser/light-based therapy. Of all the complications, 78% occurred in non-traditional medical facilities, such as free-standing medical spas and laser centers in shopping malls."¹ According to unpublished data by Mathew M. Avram, MD, JD, the percentage of medical malpractice lawsuits involving the non-physician use

¹Narurkar, V. Complications from Laser Procedures Performed by Non-Physicians. -*Skin & Aging*. 2005; 13; 9: 70-71.

of medical lasers has grown steadily over the past four years, from just 38 percent of lawsuits in 2008 to 78 percent of lawsuits in 2011.

It is the position of the CDS, the AADA, and the ASDSA that the practice of medicine involves diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities whether physical or mental, by any means, methods, devices, or instruments. The practice of medicine includes, but is not limited to undertaking to perform any surgical operation upon any person; performing any act or procedure that uses a biologic or synthetic material, or chemical application of any kind if it alters or damages or is capable of altering or damaging living tissue; and performing any act or procedure using a mechanical device, or displaced energy form of any kind if it damages or is capable of damaging living tissue.

Such acts or procedures include, for example, the use of all lasers, light sources, microwave energy, electrical impulses, chemical application, particle sanding, the injection or insertion of foreign or natural substances, or soft tissue augmentation. Living tissue is any layer below the dead cell layer (stratum corneum) of the epidermis. The epidermis, below the stratum corneum, and dermis are living tissue layers. Certain FDA-approved Class I and II devices, by their intended or improper use, can damage below the stratum corneum. Therefore, their use and the diagnosis and treatment surrounding their use, constitutes the practice of medicine.

Additionally, we would support an amendment to require a good faith appropriate examination be conducted by the overseeing physician before the initial procedure or course of treatment. Such a requirement ensures that a patient does not have pre-existing conditions which would render treatment harmful or ineffective. For example, an appropriate physician exam allows for accurate medical diagnosis for the treated condition, i.e. rather attempting to remove that unsightly "brown spot" a patient or untrained practitioner may believe to be purely cosmetic, a patient has the opportunity to receive a biopsy or skin cancer treatment as needed. Pre-existing conditions such as herpetic lesions could be inflamed by laser treatments. A preliminary exam also gives the physician the ability to prescribe the correct laser setting and proper laser for the patient's skin type; skin of color or that is tanned can be burned if the wrong laser or wrong setting is used.

We encourage implementing legislation that provides the state with simple mechanisms to improve transparency in services provided by healthcare professionals by prohibiting deceptive and misleading advertising. Patients deserve to know more about a healthcare professional – and to be able to trust that the person in the white coat providing medical care is licensed or certified to do so.

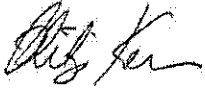
While the CDS, the AADA, and the ASDSA have the utmost respect for other health providers practicing within their scope of practice and training, we believe that patients deserve the opportunity to make informed decisions about from who they receive medical treatment. The proposition of asking detailed questions of a provider's qualifications and credentialed just as one is about to put one's health and well-being in that provider's hands can be understandably daunting. The use of clear terminology and transparency lessens the likelihood of misunderstandings.

A 2007 consumer survey conducted by the American Society for Dermatologic Surgery found that when selecting a practitioner, consumers are most interested to know the procedure will actually be done by a physician (rather than an assistant) and that the practitioner is board-certified and, therefore, qualified to do the work. However, the same survey indicated that consumers tend to have more information about procedures than they do about practitioners. This suggests that while patients are researching their cosmetic medical procedures in advance

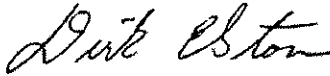
of treatment, there is an information gap in terms of the provision of accurate information regarding the level of training and licensure of the person performing these medical treatments.

For these reasons, we strongly support SB 1067. Thank you again for your consideration. For further information, please feel free to contact Debbie Osborn, Executive Director at the CDS, at eyemaster2020@yahoo.com.

Sincerely,



Philip Kerr, MD
President
Connecticut Dermatology
& Dermatologic Surgery Society



Dirk M. Elson, MD, FAAD
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